

DECISION

DECISION: IASC/DEC/9907
VARIATION OF: IASC/DET/9622
THE ROUTE: NEW ZEALAND
THE APPLICANT: QANTAS AIRWAYS LIMITED
(ACN 009 661 991)
PUBLIC REGISTER FILES: IASC/APP/99019

1 The application

1.1 On 23 March 1999, Qantas Airways Limited (Qantas) applied to the Commission to vary Determination IASC/DET/9622 (the Determination) allocating capacity on the New Zealand route to Qantas to enable it to code share with Polynesian Airlines.

1.2 Qantas and Polynesian Airlines propose to commence a code sharing arrangement, subject to technical requirements, with effect from 1 June 1999 under which each airline will code share on the other carrier's flights between Australia and New Zealand.

1.3 The Commission published a notice inviting submissions from interested parties about the Qantas application. No submissions were received.

1.4 All non-confidential material supplied by the applicant is filed on the Register of Public Documents. Confidential material supplied by the applicant is filed on the Commission's confidential register.

2 Provisions of relevant Air Services Agreements

2.1 The Australia – New Zealand Air Services Agreement of 15 July 1961, the Memorandum of Understanding (MOU) of 1 August 1992 and the Single Aviation Market Arrangements of 19 September 1996 enable Australian carriers to provide such capacity for passenger and/or freight services as they decide.

3 Commission's consideration

3.1 Variations to determinations are made by the Commission in accordance with the *International Air Services Commission Act 1992* (the Act) and the Policy Statement (No 3 of 23 April 1997, as amended on 9 March 1999) which was issued under section 11 of the Act. Under section 24 of the Act, the Commission must either make a decision confirming the determination or varying the determination in a way that gives effect to the variation requested in the application.

3.2 The Commission's task is to determine whether the determinations, as varied, would be of benefit to the public. This means that the Commission should decide whether, following the proposed variation, there would at least be the same level of public benefits as before the variation. If not, then the application should be rejected. The Commission does not see this as requiring a finding that the variations themselves result in increased benefits.

3.3 A carrier cannot use allocated capacity by providing services jointly with any other carrier without the prior approval of the Commission. The Act, as amended with effect from 25 January 1999, defines "joint international air services" as including, but not limited to, code sharing, blocked space arrangements, joint pricing, revenue and cost sharing, revenue and cost pooling, or the sale of capacity to another airline.

3.4 The code share proposal with Polynesian Airlines forms part of the arrangements for services that will operate on the Australia – New Zealand – Samoa route. The draft Codeshare Agreement between Qantas and Polynesian Airlines has been assessed by the Commission under Determination IASC/DET/9908 and it was found that there were public benefits arising from the proposal.

3.5 In addition, a factor of importance in this case is that there is unlimited capacity available between Australia and New Zealand should any other Australian carriers wish to enter the New Zealand market.

3.6 Accordingly, the Commission concludes that the application should be approved, subject to certain conditions referred to below.

4 Role of the ACCC

4.1 The Policy Statement and its associated Explanatory Memorandum make clear that the ACCC retains primary responsibility for competition policy matters. Nothing in the Commission's decisions should be taken as indicating either approval or disapproval by the ACCC. The Commission's decisions are made without prejudicing, in any way, possible future consideration by the ACCC of the Qantas/Polynesian Airlines code share agreement or operations under it.

5 Other issues

5.1 The Commission will specify in the determination that Qantas may code share with Polynesian Airlines in accordance with the relevant code share agreement that has been provided to the Commission.

5.2 When approving joint services, the Commission normally includes conditions in determinations approving code shares that the Australian carrier must price and sell its services on the route independently, that it must not share or pool revenues and that it must take all reasonable steps to ensure passengers are informed, at the time of booking, of the carrier operating the flight. The Commission will include such conditions in the determination.

6 Decision (IASC/DEC/9907)

6.1 In accordance with section 24 of the Act, the Commission varies Determination IASC/DET/9622 as requested by Qantas by:

adding the following conditions

- “Qantas may use the capacity to provide services jointly with Polynesian Airlines in accordance with:
 - the Codeshare Agreement between Qantas and Polynesian Airlines, subject to the finalised version of the Codeshare Agreement being consistent with the draft Codeshare Agreement provided to the Commission on 10 May 1999 and being approved by the Commission prior to the commencement of operations; and
 - variations to the Agreement which relate to the number of services operated by the partner airlines, subject to the prior approval of the Commission; or
 - any new joint service arrangements between Qantas and Polynesian Airlines for operations on the Samoa route, whether or not it replaces the existing agreement, with the prior approval of the Commission;

and in any case, in accordance with this determination;

- to the extent that the capacity is used to provide services jointly with Polynesian Airlines:
 - Qantas must price and sell its services on the route independently;
 - Qantas must not pool revenues with Polynesian Airlines; and
 - Qantas must take all reasonable steps to ensure passengers are informed, at the time of booking, of the carrier operating the flight;”

Dated: 17 May 1999

Russell Miller
Chairman

Michael Lawriwsky
Member

Stephen Lonergan
Member